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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ADRIAN SCHOOLCRAFT,

4 Plaintiff,

5 v.

10 CV 6005 (RWS)

6 THE CITY OF NEW YORK, ET AL.,

7 Defendants.

8 -----x

New York, N.Y.
April 30, 2014
12:02 p.m.

9
10 Before:

11 HON. ROBERT W. SWEET

12 District Judge

13 APPEARANCES

14 NATHANIEL B. SMITH

15 Attorney for Plaintiff Adrian Schoolcraft

16 MARTIN CLEARWATER & BELL

17 Attorney for Defendant Jamaica Hospital

18 BY: GREGORY J. RADOMISLI

19 SCOPPETTA SEIFF KRETZ & ABERCROMBIE

20 Attorney for Defendant Deputy Inspector Steven Mauriello

21 BY: WALTER A. KRETZ, JR.

22 IVONE, DEVINE & JENSEN

23 Attorney for Defendant

24 BY: ROBERT DEVINE

25 NEW YORK CITY LAW DEPARTMENT

OFFICE OF THE CORPORATION COUNSEL

Attorney for City Defendants

BY: RYAN G. SHAFFER

CALLAN, KOSTER, BRADY & BRENNAN

Attorney for Defendant Dr. Lillian Aldana-Bernier

BY: MATTHEW J. KOSTER

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(In open court; case called)

MR. SMITH: How are you, your Honor?

THE COURT: Actually I have a little cold. But I'm better now that you ask. Or I was up until this argument.

So who is going to do what to me today?

MR. SMITH: We have the calendar, such as it is, Jamaica Hospital has made a motion for protective order saying --

THE COURT: Yes, yes. Okay. I'll hear from the hospital.

MR. RADOMISLLI: Thank you, your Honor. Greg Radomislli from Martin Clearwater & Bell.

As we indicated in our papers, there is really one issue here, even though it's both a medical malpractice claim and a violation of the Section 1983, because in order to show a violation of Section 1983 in these circumstances they have to show that there was a departure from accepted standards of care.

The only issue is to determine whether there was a departure from accepted standards of care deals with how the psychiatrist who treated the plaintiff behaved. Any policy regarding alleged financial incentives or anything like that has absolutely no bearing on plaintiff's allegations that Dr. Aldana-Bernier should not have admitted the plaintiff.

The plaintiff's 30(b)(6) notice is all-encompassing.

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1 It asks for financial information, statistics, revenues
2 regarding involuntary hospitalization. But significantly, none
3 of that has anything to do with the allegations against the
4 codefendants, which are the physicians.

5 As this Court previously held, there are no
6 allegations regarding Jamaica Hospital Medical Center policy.
7 There is no Monell claim here. So the only thing that counts,
8 if you will, is what Dr. Aldana-Bernier and what Dr. Isakov, as
9 the basis for their decisions. And the plaintiff has already
10 asked them questions about that.

11 In terms of the request for peer review and quality
12 assurance materials, those are clearly, in addition to being
13 not relevant, privileged under the education law and the public
14 health law.

15 Now plaintiffs's counsel refers to this one case,
16 Tiesinga, but that case is not opposite because in that case
17 they were talking about the issue of whether there was going to
18 be a federal quality assurance privilege.

19 The basis for the privilege that we're asserting is
20 codified in New York law by the education law and the public
21 health law. And the cases that have respected those privileges
22 have done so when the major issue is whether there was a
23 departure from accepted standard of care; in other words, when
24 there was a medical malpractice case. And those policy
25 considerations are implicated here because to show a violation

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1 of the Mental Hygiene Law they would have to show that there
2 was a departure.

3 So, I'm not asking the Court to recognize a federal
4 privilege. I'm just asking the Court to recognize that the
5 policy considerations behind the state statutes are implicated.
6 And there are a number of cases that have recognized that
7 privilege.

8 In terms of going on as far as policies on involuntary
9 admissions. The plaintiff's attorney has already questioned
10 Dr. Aldana-Bernier and Dr. Isakov about the basis for their
11 decisions and we've already provided a copy of those policies.
12 There is no need to produce a 30(b)(6) witness on that issue
13 particularly because, according to the plaintiff's letter, the
14 only reason he wants a 30(b)(6) witness on that issue is to see
15 if the hospital agrees with the codefendant's testimony about
16 whether or not they followed hospital policy. And both under
17 this U.S. ex rel. Tiesinga v. Dianon Systems, Inc., 240 F.R.D.
18 40, it clearly states that they cannot elicit opinion testimony
19 or expert opinion testimony from a corporate witness.

20 The plaintiff then wants to question the 30(b)(6)
21 witness voting policies. Again, they've already asked the
22 codefendant physicians about those policies. We've indicated
23 that if there's a written policy, we will provide it. And
24 there is no allegation in the complaint that he was -- that
25 there was -- that he was deprived of his right to vote.

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1 The plaintiff's attorney wants to question a 30(b)(6)
2 witness, the security system, and whether or not the security
3 cameras were videotaping patients. Again, that has absolutely
4 no bearing on this case. First of all, we've already said
5 that, according to Jamaica Hospital, nothing is recorded.
6 Secondly, it's not like anything happened on the ward that
7 they're claiming that the video camera would have recorded and
8 therefore it goes to some issue in the case because the only
9 issue here is whether he was properly admitted and whether he
10 was properly kept in the hospital until he was discharged.
11 There's nothing on the security cameras: A. nothing was
12 videotaped; B. there is no question about -- I think he says
13 the operation, storage of security.

14 He wants a 30(b)(6) witness to ask about the different
15 psychiatric wards on the hospital. Well, he already questioned
16 the two doctors who are involved.

17 As I indicated in my letter, the plaintiff's whole
18 theory in this case is that the plaintiff should not have been
19 admitted to any psychiatric ward. So what difference does it
20 make which ward he was ultimately admitted on? But in any
21 event, the codefendant physicians testified about that. You
22 don't need a corporate representative from the hospital to do
23 so.

24 He then asks for a corporate witness to testify about
25 the relationship, if any, between Dr. Vivek, Dr. Luel, and

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1 somebody named Shirley Huntley.

2 Again, plaintiff's counsel asks codefendant physicians
3 about Dr. Vivek and Dr. Luel. There is no question that
4 Dr. Vivek is associated with the hospital. Dr. Luel was the
5 psychiatrist who the plaintiff's father found to treat the son
6 after he was discharged. And I've asked in my letter, in my
7 good faith attempt to resolve this, who Shirley Huntley is, but
8 plaintiff's counsel has still not told me. As far as I know
9 her name has never come up throughout this.

10 Finally, the plaintiff's counsel wants a 30(b) witness
11 to testify about the relationship, if any, between any: One,
12 security personnel; two, social worker; three, nurse; four, or
13 doctor at Jamaica Hospital and any former or present active
14 member of the NYPD.

15 I don't think it's reasonable to expect a corporate
16 witness to know who every single member of its staff -- first
17 of all, I don't know what the relationship is. I mean if they
18 went to grade school together does that constitute a
19 relationship? But in any event, it's still totally not
20 relevant because there is no -- I mean I just don't see it.
21 But more importantly it's just an impossible burden to -- I'm
22 supposed to go around asking everybody: Hey, do you know
23 anybody at the NYPD? And expect a corporate representative to
24 know everyone it associates with.

25 Lastly, plaintiff wants a 30(b)(6) witness to talk

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1 about the corporate structure of the hospital, but he does not
2 indicate in any way how the information he seeks is relevant to
3 the claims.

4 So for those reasons, we believe that a 30(b)(6)
5 witness in this case is simply not appropriate given the scope.
6 Thank you.

7 MR. SMITH: Your Honor, the hospital's position is
8 that we've already taken the depositions of the two individual
9 defendants. And essentially there's absolutely no need to take
10 the deposition of the corporate defendant because they've
11 already testified. But, the purpose of the 30(b)(6) is to
12 determine when an entity is a party what the entity says. It's
13 not -- I mean if they were to say that everything that Bernier
14 said was our corporate policy with respect to involuntary
15 admissions, then maybe that would be a way of circumventing
16 that. But they're not offering that. As I indicated, I think
17 there are some substantial departures from the actual written
18 policy promulgated by the hospital about what's required in
19 order to admit somebody involuntarily. So just as a broadbrush
20 the idea that we've already had these depositions of these
21 witnesses so you don't need -- I don't think that really
22 carries the day.

23 More importantly, I want to focus on what I think is
24 the real key issue in this motion, which is that information
25 about what was going on at the hospital and why the hospital

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1 was acting the way it was acting. And what I've learned in
2 discovery is that Schoolcraft was held for three days in limbo,
3 and then the same day that the hospital got knowledge that they
4 were going to get paid through insurance, they then admitted
5 him to the hospital.

6 What initially happened is that on 10-31-09
7 Schoolcraft was brought to the hospital against his will. They
8 asked him for insurance information. And he said I'm not
9 giving you my insurance information. I don't belong here. I'm
10 not crazy. Let me go. My supervisors brought me here in cuffs
11 and I don't belong here.

12 So he refused to provide insurance coverage. And for
13 three days he was held first in the emergency room and then in
14 the psychiatric emergency room before any determination was
15 made by a physician that he was an appropriate subject for an
16 involuntary admission.

17 Like I said, on November 3 the hospital involuntarily
18 admitted him and signed the forms required by state law to have
19 him committed against his will predicated on the idea that he
20 was dangerous to himself.

21 That was the same day that the hospital got
22 information from Schoolcraft's insurance carrier that they
23 would pay for a stay. The insurance carrier -- the notes in
24 the medical file reflect that the authorization from the
25 carrier was for from November 3 until November 6. It was on

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1 November 6, three days later, that the hospital discharged
2 Schoolcraft. And so that piece of information suggests to me
3 that sound medical judgment wasn't the only thing driving the
4 decision to admit Schoolcraft, which was delayed for three days
5 until coverage was available, and then the decision to
6 discharge him, which was made after the money had run out. So
7 that's one piece of important information that we've obtained
8 in discovery that goes to this issue about statistics and
9 finances and insurance.

10 The other piece is that the doctor who made the
11 decision to admit Schoolcraft, Bernier, testified that on
12 average over the course of a year she admits involuntarily
13 about 2,000 patients every year. And based on her schedule,
14 that's 7 or 8 involuntary admissions a day. She could not
15 provide any kind of timeline about how much time she spent
16 actually reviewing and meeting with Schoolcraft. And based on
17 what I see as an exceedingly high number of people being
18 admitted involuntarily, we propounded requests not only for
19 30(b)(6) but also for documents going to several questions,
20 which is: One: Hospital, are financial considerations
21 something that you consider in making decisions about the
22 performance of your doctors? Secondly, is insurance or the
23 availability of insurance something that you consider in terms
24 of deciding whether or not to admit or not to admit somebody or
25 to discharge somebody?

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1 So, to me the question here, going just to this
2 question of what was going on and why was Jamaica Hospital
3 acting the way it was acting, these are pretty important issues
4 in this case.

5 The information is relevant because there's a cause of
6 action in the complaint for negligent supervision and control.
7 That's the seventh or the eighth claim. It's also this
8 information about the motivations for -- why the doctors of the
9 hospital were acting is relevant because both the hospital and
10 the doctors have put their good faith in issue here. They have
11 said that we only exercised sound medical judgment. And
12 Jamaica Hospital in its answer alleges as an affirmative
13 defense that it has qualified immunity. It also alleges that
14 at all times it acted in good faith. Similarly, Dr. Isakov
15 alleges as an affirmative defense that all of his actions were
16 undertaken with justification and probable cause and in good
17 faith. And then Bernier also alleges that her evaluation and
18 treatment of Schoolcraft was privileged under the law and that
19 she had immunity.

20 So all of these defendants have put in issue their
21 good faith in their own pleadings. And so, the purpose of
22 these examinations, both by the 30(b)(6) and the requests for
23 further information, goes to this question about whether or not
24 the people who were making this decision were being motivated
25 exclusively, as they say, by the sound well-being of the

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1 patient or whether or not financial or insurance considerations
2 colored that decision.

3 I have a Second Circuit case. In looking at their
4 reply it's not directly on point. It's a prisoner's rights
5 case alleging deliberate indifference to medical needs. And it
6 was on a motion to dismiss. It's not a discovery motion. But
7 the circuit said in this case, which is Chance v. Armstrong,
8 143 F.3d 698. In sustaining the cause of action by this pro se
9 prisoner, "Crucially he has also alleged that Dr. Moore and
10 Dr. Murphy recommended extraction of his teeth not on the basis
11 of their medical views but because of monetary incentives.
12 This allegation of ulterior motives, if proven true, would show
13 that the defendants had a culpable state of mind and that their
14 choice of treatment was intentionally wrong and did not derive
15 from sound medical judgment."

16 The only reason why I'm bringing that up is because I
17 think it highlights what I thought was an obvious proposition
18 which is that when you're bringing a claim for negligence or
19 any kind of tort against a party, what they did and why they
20 did it and the financial and other motivations underlying their
21 conduct are relevant and important in assessing whether or not
22 the conduct was negligent and whether or not the defenses in
23 this case, good faith defenses are valid. So for all of those
24 reasons I think that it's appropriate to permit us to take
25 examination of the hospital on those issues.

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1 The security system. When we went to do the
2 inspection there were cameras everywhere. Counsel informally
3 has told me that there is no cameras but -- there is no footage
4 available. What happened in the ward, I don't know if there
5 was -- if there were any cameras of that. I've been told that
6 there's not. But a witness ought to be able say: Yeah, we
7 have security cameras, or we discard them, or we don't save
8 them, or whatever, something by the defendant party to say that
9 ought to be appropriate.

10 But the other thing that's disturbing about this and
11 the reason why I'm pressing the issue is because Schoolcraft
12 was brought into the emergency room on a gurney and he was
13 cuffed with one hand. And then -- and that was the night of
14 October 31, 2009. The next morning, while still in the
15 emergency room, NYPD personnel came in, saw him on the
16 telephone, and immediately went over to him, threw him on the
17 gurney and then double cuffed him so that he could no longer
18 move around or, more importantly, use the telephone. I'm sure
19 that at trial there's going to be a different spin on that, but
20 that's the plaintiff's perspective on what happened. And if
21 there were cameras that captured that incident, it would be
22 relevant to know that. And if there's not, then it would be
23 relevant to know that.

24 The other important issue I just want to stress, and
25 then I'll sit down, is that we're trying in discovery to find

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1 out whether or not Jamaica Hospital personnel who were involved
2 in the decisions relating to Schoolcraft have a relationship
3 with the NYPD informally or otherwise. And I don't know
4 whether or not the security personnel at Jamaica Hospital, for
5 example, ever worked for the NYPD.

6 I do know, because just two days ago defendant Duncan
7 testified that well when you're a police officer or sergeant
8 you can get off-duty work. You just go through this process
9 and you can get assigned security at a bank or something else.
10 He said he didn't know anything about doing security work for
11 the hospital. But in any event, if the people who were
12 directly involved in the Schoolcraft matter have a relationship
13 with the NYPD during this period of time. I'm not talking
14 about now. The request was in '08 and '09. Similarly, you
15 know, the other doctors, do they know somebody from the NYPD?
16 Have they ever worked for the NYPD? If there's some sort of
17 relationship like that, then obviously that would be a very
18 important piece of information.

19 I understand counsel's arguments well how is one
20 administrator going to know, you know, the life history of
21 everybody who works for our hospital. If that was my request
22 it would be a pretty good objection. But it's not. What I've
23 asked for are security personnel, nurses, doctors, the people
24 who were at the facility in this period of time, '08 and '09.
25 It might be a little bit of an investigation, but it ought to

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1 be done. Do they have that kind of a relationship? They know
2 better than me how burdensome that would be, the number of
3 people involved, and the complexities or lack of complexity
4 about making a determination about that.

5 THE COURT: Well, I can see security. I don't see the
6 nurses. They didn't have any hand in this.

7 MR. SMITH: Well, I mean --

8 THE COURT: Social workers, they didn't have any hand.

9 MR. SMITH: There was one nurse, there were two
10 residents, and there was a social worker who did have direct
11 contact with Schoolcraft. A nurse actually went over to one of
12 the police officers and said: His hand is blue. Can you
13 loosen the cuff? And she was told no.

14 There's a medical chart. The medical chart -- if we
15 wanted to try and narrow this down --

16 THE COURT: Forgive me. Were there any hospital
17 security involved in any of this?

18 MR. SMITH: So far as I know no hospital security put
19 their hands on Schoolcraft or acted in a way to control his
20 bodily activities. That was done by NYPD people who were
21 sitting on him until Schoolcraft was brought to the psychiatric
22 emergency room where you go behind double doors with cameras
23 and you're not leaving there without somebody saying okay. So
24 that's the extent of my knowledge about the security
25 personnel's involvement in this. I don't know. I hope that

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1 answers your question.

2 And like I said before, I think the corporate
3 structure. I just want to know: What is this entity? What's
4 its business purpose? Is it a not-for-profit?

5 These are kind of minor matters. I don't think
6 they're all that important in the scheme of things. But you
7 are a defendant. You are an entity. You ought to have to
8 answer on behalf of yourself as an entity and not say
9 informally: Well, you took the deposition of this person who
10 works for us so I don't need to show up and answer questions
11 about who I am or what I did.

12 THE COURT: Well, what is it that you want this
13 witness to testify to? The corporate structure?

14 MR. SMITH: Yeah. Who are you? How do you exist?
15 Are you, in fact, a not-for-profit? How many people employ
16 you? Who are the officers? Who are the decision makers?

17 It's not an extensive subject matter. And, frankly,
18 it's not all that critical. But it is important in the sense
19 that Jamaica Hospital is a defendant and they ought to, just
20 like any other legal party, have to appear and answer questions
21 that are pertinent to the case.

22 MR. RADOMISLLI: Answer questions that are pertinent
23 to the case. That's the key.

24 None of the topics that the plaintiff's attorney seeks
25 to depose of this 30(b)(6) witness have any bearing on the

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1 case. There are issues that could have been asked, but those
2 are not the subject of his 30(b)(6).

3 I would just like to make a couple quick points. One
4 is he keeps saying: The hospital decided this, the hospital
5 did that. There are two decision makers in this case, both
6 attending physicians. They are the only ones who made the
7 decisions. One of them made the decision to admit. The other
8 made the decision to discharge. It's their rationale that's at
9 stake and their rationale that's in question.

10 And as far as qualified immunity goes. Because there
11 are no longer any civil rights claims against the hospital, the
12 qualified immunity issue as to Jamaica Hospital is no longer
13 relevant. And the qualified immunity as to the codefendant
14 physicians goes to their good faith. And they've already been
15 questioned about what their motives are.

16 Secondly, plaintiff's counsel said that he's bringing
17 a negligence action. Negligence has nothing to do with
18 motivation. If they were motivated by something, that would be
19 an intentional act. Negligence is: Oops we did not do the
20 right thing by mistake.

21 So, whatever -- what's he saying? It was potentially
22 or not? And it goes against their entire theory of this case,
23 which is that the only reason that the plaintiff was
24 hospitalized was because the doctors were working in
25 conjunction with the NYPD. There's nothing to do with this

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1 financial issue. I mean it's like saying if -- has nothing to
2 do with the financial issues. And every single person who has
3 testified, by the way, has testified that they are not aware of
4 any -- they have no relationship between the Jamaica Hospital
5 and NYPD. Even if there were. So what? What does that got to
6 do with Dr. Aldana's decision to admit the patient and
7 Dr. Isakov's treatment while he was on the floor? Nothing
8 whatsoever, your Honor.

9 THE COURT: Thank you all. Anybody else want to be
10 heard on this?

11 The 30(b)(6) witness will testify with respect to four
12 elements: The evaluation process of the doctors; second, the
13 admissibility policy of the hospital, and included in that will
14 be any determinations made by the hospital as part of their
15 policies with respect to allocation to different wards. The
16 third element will be the use and operation of the security
17 cameras. And the fourth will be the corporate structure of the
18 hospital.

19 Anything further?

20 Thank you all.

21 MR. SMITH: There is on the calendar, your Honor, my
22 motion to strike.

23 THE COURT: Oh, yes. I mean further on this issue.

24 MR. SMITH: Right, right.

25 THE COURT: Okay. Yes. The motion to strike.

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1 Anybody want to be heard?

2 MR. KRETZ: Your Honor, may we approach very quickly,
3 Mr. Smith and I?

4 THE COURT: Sure.

5 (Discussion off the record at sidebar).

6 THE COURT: I'll take it on submission. Thank you.
7 Thank you all.

8 MR. KRETZ: Thank you, Judge.

9 THE COURT: Good bye.

10 (Adjourned)